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Before the
Federal Communications Commission
Washington, D.C. 20554

Jul 21 4 08 PM '93
MM Docket No. 93-203

In the Matter of

DISPATCHED BY

Amendment of Section 73.202(b), RM-8245
Table of Allotments,
FM Broadcast Stations.
(Islesboro, Maine)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 25, 1993;

Released: July 20, 1993

Comment Date: September 9, 1993

Reply Comment Date: September 24, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Islesboro Broadcasting Company ("petitioner"), requesting the allotment of Channel 288B1 to Islesboro, Maine, as that community's first local broadcast service. Petitioner filed information in support of the proposed allotment and indicated its intention to file an application for Channel 288B1 at Islesboro.

2. In support of its request, petitioner states that Islesboro is an island community located in Penobscot Bay on Maine's "mid-coast" and enjoys daily passenger and vehicle ferry service from Lincolnville, Maine. According to petitioner, Islesboro has an independent form of government, schools and a post office, along with two "lodging" establishments and some twenty-five businesses. Petitioner states Islesboro has a full-time population of 570 and a seasonal population of over 2,000. Petitioner contends that allotment of Channel 288B1 to Islesboro will provide a much needed broadcast service to the community and surrounding area.

3. We note that our review of the proposal shows that the 1993 edition of the *Rand McNally Commercial Atlas* ("Atlas") has two listings for Islesboro, one for "Islesboro, town of," with a separate zip code and a 1990 U.S. Census population of 579. The second listing is for Islesboro (township, "town," or other minor civil division) with a population of 125 and a post office. No source is indicated for the population figure.

4. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several states and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate

its status. However, Islesboro's status as a community is ambiguous, in light of the listing in the *Atlas*. Furthermore, while petitioner has alleged that there are some local businesses and schools, it has not specifically identified these entities with names and addresses or shown that they are intended to serve Islesboro, as opposed to other areas. This is a critical deficiency because, in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. Therefore, the petitioner should present the Commission with specific information to demonstrate that Islesboro has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See *Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991), and cases cited therein. Petitioner is requested to clarify the population of the community of Islesboro along with the location of the post office.

5. Channel 288B1 can be allotted to Islesboro in compliance with the Commission's minimum distance separation requirements with a site restriction 16.7 kilometers (10.4 miles) south of the community.¹ The site restriction will prevent a short spacing to Station WHMX, Channel 289C2, Lincoln, Maine. Since Islesboro is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment. The proposal must conform with the technical requirements of Section 73.1030(c)(1)-(5) of the Rules regarding protection to the Commission's Monitoring Station at Belfast, Maine.

6. We believe the public interest would be served by proposing the allotment of Channel 288B1 to Islesboro, Maine, if it is ultimately found to be a community for allotment purposes, since it could provide a first local FM broadcast service to the community. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Present	Channel No. Proposed
Islesboro, Maine	---	288B1

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **September 9, 1993**, and reply comments on or before **September 24, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Richard J. Hayes, Jr., Esquire
13809 Black Meadow Road
Spotsylvania, Virginia 22553

¹ The coordinates for Channel 288B1 at Islesboro are 44-09-31

and 68-53-03.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.